

In the Matter of Merchant Mariner's Document No. z-361092
Issued to: ADAM BRUCE

DECISION AND FINAL ORDERS OF THE COMMANDANT
UNITED STATES COAST GUARD

745

ADAM BRUCE

In the Matter of Merchant Mariner's Document No. Z-361092
Issued to: ADAM BRUCE

Merchant Mariner's Document No. Z-168556-D2
Issued to: CHARLES A. JOYNES

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 13 January, 1954, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Merchant Mariner's Document Nos. Z-361092 and Z-168556-D2 issued to Adam Bruce and Charles A. Joynes, respectively, upon finding them guilty of misconduct based upon separate specifications alleging in substance that while serving as able seamen on board the American SS CHARLOTTE LYKES under authority of the documents above described, on or about 30 December, 1953, while said vessel was in the port of New Orleans, Louisiana, they wrongfully had marijuana in their possession.

Since the charges and specifications were identical, it was stipulated by all parties concerned that a joint hearing would be held.

At the hearing, both Appellants were given a full explanation of the nature of the proceedings, the rights to which they were entitled and the possible results of the hearing. The appearance of the same counsel was entered on behalf of both Appellants. Each Appellant entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statements and introduced in evidence the testimony of five United States Customs employees. The Investigating Officer also testified as to his personal observations when the contents of the Appellants' clothing were brushed out at the U.S. Customs Laboratory in New Orleans.

After counsel's motion to dismiss because of the nature of the evidence was denied by the Examiner, the Appellants testified in their own behalves. Among other things, they both testified that they had never bought or used marijuana and did not know what it looked like. Seaman Fletcher, who was Appellants' roommate on the ship, testified that he had neither seen either of the Appellants smoking nor suspected them of doing so on the voyage which lasted more than three months.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved, as to both Appellants, by proof of the specification. He then entered the order revoking Appellants' Merchant Mariner's Document Nos. Z-361092 and Z-168556-D2, and all other licenses, certificates and documents issued to these Appellants by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged by each Appellant that since there is a reasonable possibility that they were "framed," the decision of the Examiner should be reversed or his orders reduced to impose a suspension in each case. It is contended that the Master of the ship

had previously caused trouble for Appellant Joynes and that Appellant Bruce was "caught in the middle" because he was a friend and roommate of Joynes. Letters attached to Appellants' appeals attest to their good character and reputation.

APPEARANCES: Messrs. Reed and Reed, of New Orleans, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On a foreign voyage including the dates of 29 and 30 December, 1953, Appellants were serving as able seamen on board the American SS CHARLOTTE LYKES and acting under authority of their Merchant Mariner's Document Nos. Z-361092 and Z-168556-D2 while the ship was at New Orleans, Louisiana, after completion of the voyage.

The ship arrived at New Orleans at about 1830 on 29 December, 1953, and was met by customs Agents McLendon and Crawford who had received information that the Master had found marijuana on board before the ship arrived at the above port.

The Customs Agents went on board and took custody of the package of marijuana which the Master stated he had discovered in a tin can that was in a boot under the locker of Appellant Joynes. The quarters where this marijuana was found were occupied on the voyage by both Appellants and seaman Fletcher.

Having received information from the Master and the ship's officers which placed the two Appellants and four or five other members of the crew under suspicion of using marijuana, Agent McLendon talked with these six or seven members of the crew and told them that he wanted to see them on board the following morning.

At approximately 0830 on 30 December, 1954, the Customs Searching Squad boarded the ship and conducted a thorough search of the quarters and belongings of the crew. This preliminary investigation disclosed fragments of vegetable matter, in the clothing of Appellants, which the Port Patrol Officers thought was marijuana. The search of Appellants' lockers was conducted in their presence. This led to a complete investigation of all Appellants' clothing after they were taken to the Customs Laboratory. There was no other evidence of marijuana found on the ship by the searching party.

At the Customs Laboratory and in the presence of Appellants, the fragments from their different pieces of clothing were swept out, with a separate clean brush being used for the clothing of each Appellant. The Customs authorities obtained three separate samples of vegetable matter from the two side pockets, the two cuffs and two hip pockets of blue gabardine trousers belonging to Appellant Bruce. Two separate samples were brushed from the pockets and cuffs of gray trousers of Appellant Joynes and from the side and inside pockets of a brown check coat of his. Individual analysis of these five samples disclosed that each of the samples contained marijuana. There was

no evidence of marijuana in other samples obtained from the clothing of the Appellants except that there was a marijuana seed in the watch pocket of Appellant Bruce's blue denim trousers and another marijuana seed in the right side pocket of blue wool trousers belonging to the same Appellant. The latter seed was incapable of germination because it was broken.

No criminal action was taken by the Federal authorities because of the small amount of marijuana that was found in Appellants' clothing.

OPINION

The only evidence presented in this case consists of fragments of marijuana gleaned from the clothing of the Appellants. While such fragments were established to be marijuana by chemical analysis, the total quantity was so minute as not to present a hazard per se. In my opinion, such evidence, standing alone, and without other supporting facts or circumstances, is not sufficient to sustain the charge in this case.

ORDERS

The orders of the Examiner dated at New Orleans, Louisiana, on 13 January, 1954, are SET ASIDE, VACATED AND REVERSED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 16th day of August, 1954.